

14. The assembly of Claim 11 wherein said wells are rotatably mounted on said shelf and further including one or more driver(s) for selectively rotating said wells on said shelf.

15. The assembly of Claim 14 wherein there is a single optical imaging device adjacent to each of said container(s), said container(s) being sized to contain a plurality of specimens, and said optical imaging device(s) being radially offset from an axis of said container(s), and wherein said driver(s) are operable to selectively and periodically align individual specimens disposed in said container(s) with said optical imaging device(s) during said growth cycle.

16. The assembly of Claim 11 wherein each of said wells includes a bottom wall which focussing lens for said optical-imaging device(s).

17. The assembly of Claim 16 wherein said optical imaging device(s) is (are) CCD camera(s).

REMARKS

Claims 1-10 were submitted for examination. Claims 1, 9 and 10 stand rejected as being anticipated by Bisconte. Claims 2-8 have been indicated as being allowable. New Claims 11-17 have been added. Our check in the amount of \$43.00 is enclosed in payment of the fee needed in connection with newly added independent Claim 11.

In formulating the §102 rejection, the Examiner states merely that: "The Bisconte patent discloses an incubator which comprises transparent walls (3,9) for visually inspecting the interior of the incubator. Inside the incubator are shelves (1) for supporting the specimens. The incubator is also equipped with a video camera for monitoring the sample containers (col. 3, line 64-67; col. 4, lines 47-67).".

The factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention. See: Ex parte Levy, 17 USPQ2d 1461 (PTO Bd. of Pat. App. and Int. 1990). Furthermore, the allegedly anticipating reference must be enabling so that one reading the reference would be enabled to create the allegedly anticipated claimed subject matter.

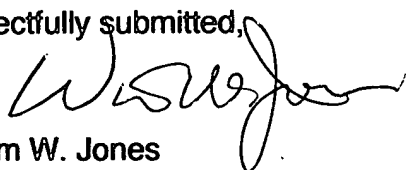
The Bisconte reference states that: "if required, an optical device for effecting colorimetry, opacity or other measurements to be carried out" can be performed (see Col. 3, line 68-Col. 4, line 2, of Bisconte). The purpose of effecting colorimetry, opacity or other measurements which can be performed is not specifically set forth in the reference.

A prior art disclosure is nothing more than an invitation to experiment with the prior art disclosure when the disclosure in question does not contain a sufficient teaching of how to achieve the desired result. We characterize such teachings as "try it, it might work" teachings. See: In re Yates, 211 USPQ 1149 (CCPA 1981); In re Fine, 5 USPQ 2d 1596 (Fed. Cir. 1988); and In re Eli Lilly & Co., 14 USPQ2d 1741 (Fed. Cir. 1990).

Bisconte goes on to list some devices which might be incorporated into the apparatus it describes (see Col. 4 beginning at line 47). One such additional device is said to be at least one observation device which is coupled or not to motor driven stages as well as to an image analyzer, (or?) to a photographic apparatus, or to a video tape recorder, or to a host of other devices. None of these additional devices are described in any detail, and the manner in which they might be interconnected is likewise not described in any detail. There is no photographic apparatus, image analyzer or video tape recorder shown anywhere in the drawings. The only other reference to taking optical measurements is contained in Claim 10 of the patent. This claim states that each compartment 16 is transparent, that there is an appropriate space above and below each compartment for introducing a device for carrying out optical measurements by means of the handling arm B. This claim is not enabled by the specification of Bisconte because the appropriate spaces are not shown in the drawings, there is no device for carrying out optical measurements shown in the drawings, and there is no description of how such a device could be maneuvered by the handling arm B. The fact that details of the optical measurement system are not disclosed anywhere in the specification or drawings renders the patent non-enabling relative to such a system, and therefore constitutes nothing more than an invitation to experiment with such a system. This being the case, the anticipation rejections of Claims 1, 9 and 10 are not supported by the reference in question and should be reconsidered and withdrawn.

It is respectfully submitted that this application is presently in condition for allowance. Early notice to that effect is courteously requested.

Respectfully submitted,



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Date 9-19-04